

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-6060

RICHARD ALLEN TOWERY, JR.,

Petitioner - Appellant,

v.

ERIK A. HOOKS, Secretary of Public Safety; CARLOS HERNANDEZ,
Superintendent of Avery-Mitchell Correctional Inst.,

Respondents - Appellees.

Appeal from the United States District Court for the Western District of North Carolina,
at Asheville. Frank D. Whitney, Chief District Judge. (1:18-cv-00299-FDW)

Submitted: May 23, 2019

Decided: May 29, 2019

Before KING and RICHARDSON, Circuit Judges, and SHEDD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Richard Allen Towery, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard Allen Towery, Jr., a state prisoner, seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2241 (2012) petition.* The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Towery has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal

* Our decision in *Goode v. Central Virginia Legal Aid Society, Inc.*, 807 F.3d 619 (4th Cir. 2015), does not preclude this appeal because the district court dismissed the petition for a "reason[] unrelated to the contents of the pleadings." *Id.* at 624.

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED